

PAYMENT OF WAGES ACT AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Timothy D. Hawkes

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to the payment of wages.

Highlighted Provisions:

This bill:

► modifies the definition of "employer" under Title 34, Chapter 28, Payment of Wages.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34-28-2, as last amended by Laws of Utah 2016, Chapter 370

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **34-28-2** is amended to read:

34-28-2. Definitions -- Unincorporated entities -- Joint employers -- Franchisors.

(1) As used in this chapter:

(a) "Commission" means the Labor Commission.

(b) "Division" means the Division of Antidiscrimination and Labor.



28 (c) "Employer" [~~includes every person, firm, partnership, association, corporation,~~
29 ~~receiver or other officer of a court of this state, and any agent or officer of any of the~~
30 ~~above-mentioned classes, employing any person in this state.~~] means the same as that term is
31 defined in 29 U.S.C. Sec. 203.

32 (d) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec.
33 105, of the federal government.

34 (e) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

35 (f) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

36 (g) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

37 (h) "Unincorporated entity" means an entity organized or doing business in the state
38 that is not:

39 (i) an individual;

40 (ii) a corporation; or

41 (iii) publicly traded.

42 (i) "Wages" means the amounts due the employee for labor or services, whether the
43 amount is fixed or ascertained on a time, task, piece, commission basis or other method of
44 calculating such amount.

45 (2) (a) For purposes of this chapter, an unincorporated entity that is required to be
46 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to
47 be the employer of each individual who, directly or indirectly, holds an ownership interest in
48 the unincorporated entity.

49 (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,
50 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption
51 under Subsection (2)(a) for an individual by establishing by clear and convincing evidence that
52 the individual:

53 (i) is an active manager of the unincorporated entity;

54 (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated
55 entity; or

56 (iii) is not subject to supervision or control in the performance of work by:

57 (A) the unincorporated entity; or

58 (B) a person with whom the unincorporated entity contracts.

59 (c) As part of the rules made under Subsection (2)(b), the commission may define:
60 (i) "active manager";
61 (ii) "directly or indirectly holds at least an 8% ownership interest"; and
62 (iii) "subject to supervision or control in the performance of work."
63 (d) The commission by rule made in accordance with Title 63G, Chapter 3, Utah
64 Administrative Rulemaking Act, may establish a procedure, consistent with Section 34-28-7,
65 under which an unincorporated entity may seek approval of a mutual agreement to pay wages
66 on non-regular paydays.

67 (3) For purposes of determining whether two or more persons are considered joint
68 employers under this chapter, an administrative ruling of a federal executive agency may not be
69 considered a generally applicable law unless that administrative ruling is determined to be
70 generally applicable by a court of law, or adopted by statute or rule.

71 (4) (a) For purposes of this chapter, a franchisor is not considered to be an employer of:
72 (i) a franchisee; or
73 (ii) a franchisee's employee.

74 (b) With respect to a specific claim for relief under this chapter made by a franchisee or
75 a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise
76 that exercises a type or degree of control over the franchisee or the franchisee's employee not
77 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks
78 and brand.